



Office of the City Manager

CONSENT CALENDAR  
July 25, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Side Letter Agreement: Hornblower Sublease

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter Agreement with 200 Marina Boulevard, Berkeley, LLC (“Doubletree Hotel”) to memorialize the terms and amount of Hornblower sublease rent payments and provide the City’s consent to the Hornblower sublease at the Doubletree Hotel at the Berkeley Waterfront.

FISCAL IMPACTS OF RECOMMENDATION

The City will continue to receive 25% of Hornblower sublease revenue from the Doubletree. The Hornblower’s sublease rent will be \$8,800 per month, of which the City’s 25% share would be \$2,200 per month. This will increase annually by 5% or CPI, whichever is higher.

CURRENT SITUATION AND ITS EFFECTS

The Doubletree Hotel ground lease with the City allows the hotel to sublease to the Hornblower Yachts, Inc. to use hotel office space and docks to operate a dinner cruise service at the Berkeley Waterfront. In 2020, the City and the Doubletree Hotel completed a lease renewal of the main [ground lease](#) (Ordinance No. 7,696-N.S.) At that time, the Doubletree had not yet completed renewal negotiations with their existing subtenant, Hornblower Yacht, Inc. and so the Hornblower continued to provide dinner cruise service under the terms of the prior sublease from 2008.

In the spring of 2023, the Doubletree Hotel completed negotiations with Hornblower Yachts, Inc. for a renewal of the sublease. The Doubletree Hotel ground lease of 2020 requires a new side letter agreement between the City, Doubletree and Hornblower in order to memorialize the terms and amount of Hornblower sublease rent payments and provide the City’s consent to the Hornblower sublease at the Doubletree Hotel at the Berkeley Waterfront.

The new Hornblower sublease is substantively similar to the prior sublease from May 2008, which provides for the use of a small office area in the main hotel building, and

the dock, berths and charter yacht facility adjacent to the Doubletree Hotel for the purposes of charter yacht docking, vessel maintenance, food preparation, and office space. The term is for 9 years plus two 5-year options. The side letter continues to provide for the City's 25% share of sublease revenue and provides the City's consent to sublease. The side letter includes a new provision that requires Hornblower to observe and comply with all applicable laws, including the City of Berkeley's labor peace ordinance. Council authorization is required in order for the City to execute the side letter agreement for the new Hornblower sublease.

### BACKGROUND

In April 2020, Council approved a 60-year [lease agreement](#) with the Doubletree Hotel at the Berkeley Waterfront. In addition to the hotel premises, the lease includes a 1,000 ft dock which houses the Hornblower Yacht that provides dinner cruises. The 2020 lease incorporated the existing Hornblower sublease from May 2008, allowing them to use the dock and facilities for docking, vessel maintenance, food preparation and office space

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The sublease contains provisions requiring compliance with all environmental laws and requirements in the ground lease.

### RATIONALE FOR RECOMMENDATION

The proposed side letter agreement and consent to sublease continues the productive use of the dock area adjacent to the Doubletree, providing an amenity to the community and needed revenue to the Marina Fund.

### ALTERNATIVE ACTIONS CONSIDERED

None

### CONTACT PERSON

Scott Ferris, Parks, Recreation & Waterfront, 510-981-6700

Christina Erickson, Parks, Recreation & Waterfront, 510-981-6703

### Attachments:

#### 1. Resolution

Exhibit A: Side Letter: Agreement for Sublease for Dock and Other Facilities by and between the City of Berkeley, 200 Marina Blvd, Berkeley, LLC and Hornblower Yachts, Inc.

Exhibit B: Sublease for Dock and Facilities by and between 200 Marina Blvd, Berkeley, LLC and Hornblower Yachts, Inc.

RESOLUTION NO. -N.S.

SIDE LETTER AGREEMENT FOR HORNBLOWER SUBLEASE

WHEREAS, in April 2020, the City Council approved a 60-year lease agreement with 200 Marina Blvd, Berkeley LLC, the owner/ground lessee of the Doubletree Hotel at the Berkeley Waterfront; and

WHEREAS, the leased premises includes a 1,000 ft dock which houses the Hornblower Yacht, a dinner cruise yacht operator; and

WHEREAS, Hornblower, Inc. has operated under sublease to the Doubletree since 2008, and recently negotiated a new sublease in 2023, including a term of 9 years plus two 5-year options; and

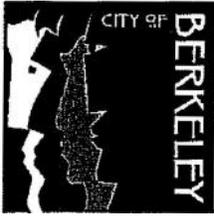
WHEREAS, a new side letter agreement between the City, Doubletree and Hornblower is required in order to provide the City's consent to sublease and to memorialize that the City will continue to receive a 25% share of sublease revenue.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a side letter agreement with 200 Marina Boulevard, Berkeley, LLC to memorialize the terms and amount of Hornblower sublease rent payments and the City's consent to the Hornblower sublease at the Doubletree Hotel at the Berkeley Waterfront. The side letter and sublease shall be substantially in the form attached hereto as Exhibits "A" and "B".

Exhibits:

A: Side Letter: Agreement for Sublease for Dock and Other Facilities by and between the City of Berkeley, 200 Marina Blvd, Berkeley, LLC and Hornblower Yachts, Inc.

B: Sublease for Dock and Facilities by and between 200 Marina Blvd, Berkeley, LLC and Hornblower Yachts, Inc.



Office of the City Manager

\_\_\_\_, 2023

200 Marina Boulevard, Berkeley, LLC  
c/o Junson Assets Management LLC  
140 East 45<sup>th</sup> Street, 29<sup>th</sup> Fl  
New York, New York 10017

HORNBLOWER YACHTS, INC  
Pier 3, The Embarcadero  
San Francisco, California 94111

Re: Agreement for Sublease for Dock and Other Facilities by and between 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company (“Owner”), and Hornblower Yachts, Inc., a California corporation (“Hornblower”) dated \_\_\_\_, 2023 (“Sublease”)

Dear Ladies/Gentlemen:

This letter agreement (“Letter Agreement”) memorializes (a) the terms and amount of City’s share of Hornblower sublease rent payments, and (b) City’s consent to the Sublease pursuant to Section 13.2 of that certain Ground Lease dated May 28, 2020 (“Lease”) between the City of Berkeley, a municipal corporation (“City” or “Lessor”) as Lessor, and Owner. An executed copy of the Sublease is attached as Exhibit A, and an executed copy of the Lease is attached to the Sublease as Exhibit B.

1. City’s Hornblower Share.

A. Notwithstanding Section 13.2 of the Lease, twenty-five percent (25%) of the Monthly Base Rent<sup>1</sup> (including any annual or other increases thereof, and any holdover rent amounts as described in Section 8.2 of Sublease) shall be payable by Owner to City (“City’s Hornblower Share”). The City hereby acknowledges that Owner has paid such City’s Hornblower Share with respect to the Sublease and all prior agreements with Hornblower.

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<sup>1</sup> “Monthly Base Payment” is as referenced in Sections 2.1 and 2.2 of the Sublease.

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B. City's Hornblower Share shall be paid by Owner to City in the same manner as Percentage Rent as set forth in Section 2.4(C) of the Lease, and shall be paid in lieu of that portion of Percentage Rent that would otherwise be attributable to Hornblower sublease rent, as a component of Hotel Gross Receipts, pursuant to Section 2.4(A) of the Lease.

C. Notwithstanding anything in the Lease to the contrary, the obligations and objectives identified in Section 13.2 of the Lease are intended to apply not only to the Sublease, but to all extensions, renewals, and reiterations thereof, and all similar agreements (whether now or in the future, and whether with Hornblower, its successors, other charter yacht operator, or similar provider) related to charter yacht operations or other use or occupancy of Charter Yacht Facility.

2. City's Consent to Sublease. Subject to the terms and conditions contained within this Letter Agreement, City consents to the Sublease:

A. City shall not be bound by any of the terms and conditions of the Sublease, nor shall this Letter Agreement, or City's Consent to Sublease as set forth in this Section 2, be construed to (i) constitute a consent by City to a term in the Sublease beyond the term of the Lease; (ii) require City to recognize Hornblower in the event of a default under the Lease by any party; (iii) enlarge or in any manner increase City's obligations or duties under the Lease; (iv) create obligations or costs to City with regards to the Sublease; or (v) require that City first exhaust its remedies against Owner before proceeding against Hornblower, or first exhaust its remedies against Hornblower before proceeding against Owner, in any action under the Lease.

B. Except for the provision above entitled "City's Hornblower Share," nothing herein shall be deemed to amend any provision of the Lease, all of the rights of City under the Lease are hereby expressly reserved, and the Lease shall control in the event of any conflict between the Lease and the Sublease.

C. Nothing herein or in the Sublease shall be deemed to waive any of City's rights under the Lease or relieve Owner of any of its obligations under the Lease, nor shall this Letter Agreement or the Sublease waive or render unnecessary City's consent to or approval of any subsequent act or agreement by Owner (including City's consent to any other sublease or similar agreement).

D. In addition to other Sublease requirements, (i) Hornblower shall observe and comply with all applicable Laws as that term is defined in Section 5.8 of the Lease, and any labor peace policy ordinance of City of Berkeley Ordinance that is effective as of the date of this Side Letter and that is applicable to Sublessor; (ii) copies of notices of default and other material changes to the terms or conditions of the Sublease (including changes to any Payments as defined therein) given under the Sublease shall be provided to City concurrently by the noticing party at the addresses set forth in the Basic Lease Information of the Lease; (iii) the defined term "Indemnitees" under Sublease Section 3.2 of the Sublease shall include Lessor and each of its officers, officials, agents, volunteers and employees; (iv) Hornblower shall indemnify City in the same manner as Hornblower is required to indemnify Owner under the Sublease, except that such indemnity shall not apply to the extent damages or losses are caused by City's sole or active negligence or willful misconduct and except that in any action in which counsel is chosen by Hornblower to represent City under Sublease Sections 3.2 or 11.2, the Berkeley City Attorney's Office shall have the right to participate in the City's defense at the City's sole cost and

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expense; (v) Hornblower shall expressly name City as an additional insured under each insurance policy required under the Sublease (except Worker's Compensation and Employer's Liability Insurance, as used in Section 10.1 of the Sublease); and (vi) Hornblower assumes and agrees to perform and be bound by all covenants, conditions and obligations binding upon Owner as Lessee under the Lease with regard to the Subleased Premises; provided, however, that Hornblower does not assume and shall not be obligated to perform Owner's obligations as Lessee under the Lease to pay Rent (as defined in the Lease) except to the extent set forth in the Sublease.

E. The Sublease is expressly subject and subordinate to the Lease and all amendments thereto, that certain statutory grant from the State of California to the City of Berkley, as set forth in Statutes 1913, Chapter 347, as amended, and any other encumbrances, restrictions, or mortgages on City's interest in the Premises. The Lease is incorporated into the Sublease and made a part thereof by its attachment to the Sublease as Exhibit B thereto.

3. Miscellaneous Provisions. Each exhibit referred to in this Letter Agreement is attached hereto and incorporated by reference, as though fully restated herein. This Letter Agreement constitutes the entire understanding and agreement among City, Owner, and Hornblower with respect to City's consent to the Sublease, and supersedes all prior agreements and understandings, written or oral, between lessor, Owner, and Hornblower with respect to such consent. Each of the parties has read this Letter Agreement and any waivers and releases contained herein and on advice of counsel each party has freely and voluntarily entered into this Letter Agreement. Capitalized terms not otherwise defined herein have the meaning set forth in the Lease, captions and headings are for convenience only, "may" is permissive, "shall" is mandatory, "or" is inclusive, and variations of the words "include" shall be interpreted as though followed by the words "without limitation." This Letter Agreement shall not and cannot be modified or amended, nor any term or provision be waived or discharged, except as expressly stated in a writing signed by City, Owner and Hornblower as to sections 2 and 3 hereof (City's Consent to Sublease, Miscellaneous), and by City and Owner only as to section 1 hereof (City's Hornblower Share). This Letter Agreement shall be construed in accordance with, and be governed by, the laws of the State of California without regard to conflict of law principles. If any party commences litigation or similar proceeding against any other party in connection with this Letter Agreement, each party waives any right to a trial by jury and the prevailing party shall be entitled to an award of reasonable attorney's fees and costs incurred. This Letter Agreement shall be binding upon the parties to it and their respective heirs, representatives, successors and assigns. If any provision hereof or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions hereof and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

*[Signatures follow on next page]*

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**CITY OF BERKELEY,**  
a municipal corporation

By: \_\_\_\_\_

Name:

Title:

Acknowledged and Agreed:

**200 MARINA BOULEVARD, BERKELEY, LLC,**  
a Delaware limited liability company

By: Junson Assets Management LLC,  
a Delaware limited liability company, its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed:

**HORNBLOWER YACHTS, INC.,**  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Execution Version*

**SUBLEASE FOR DOCK AND OTHER FACILITIES**

**BETWEEN**

**200 MARINA BOULEVARD, BERKELEY, LLC  
(SUBLESSOR)**

**AND**

**HORNBLOWER YACHTS, INC.  
(HORNBLOWER)**

## **SUBLEASE FOR DOCK AND OTHER FACILITIES**

This Sublease for Dock and Other Facilities (“Agreement”) is entered into as of \_\_\_\_\_, 2023 (the “Effective Date”), by and between 200 Marina Boulevard, Berkeley, LLC, a Delaware limited liability company (“Sublessor”), as sublessor, and HORNBLOWER YACHTS, INC., a California corporation (“Hornblower”), as sublessee.

### **RECITALS**

A. Pursuant to that certain Ground Lease dated as of January 18, 2008 (the “Ground Lease”) by and between the City of Berkeley, a municipal corporation, and Sublessor, as successor-in-interest to Boykin Berkeley, LLC, a Delaware limited liability company (“Boykin”), Sublessor leases certain land owned by the City of Berkeley and operates a hotel and restaurant facility that has been constructed thereon (the “Facility”), which Facility is currently known as the DoubleTree by Hilton Berkeley Marina.

B. Pursuant to that certain Agreement for Use of Dock and Other Facilities dated as of May 28, 2008 (the “Prior Agreement”), by and between Boykin and Hornblower, Hornblower has the right to occupy and use of a portion of the Facility for docking, vessel maintenance, food preparation and office space.

C. Sublessor, as the successor-in-interest to Boykin under the Prior Agreement, and Hornblower now desire to amend and restate the Prior Agreement in its entirety and enter into this Agreement, which establishes the terms and conditions for Hornblower's sublease and continuing occupancy and use of such portions of the Facility.

### **AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Hornblower hereby agree as follows:

#### **Article 1 PREMISES, TERM**

1.1 AMENDMENT AND RESTATEMENT OF PRIOR AGREEMENT. The Prior Agreement, to the extent that it is still in effect, is hereby amended and restated in its entirety as of the Commencement Date of this Agreement.

1.2 SUBLEASE OF THE PREMISES. Sublessor hereby subleases to Hornblower, and Hornblower hereby subleases from Sublessor, the Premises (as defined below) for the Term (as defined below) of this Agreement. The “Premises” include the following four (4) portions of the Facility:

(a) the berths and associated marginal float described in Section 5.16.E of the Ground Lease (the “Berth Area”), which is located on the western-most portion of the Facility as shown on Exhibit A attached hereto;

(b) the Charter Yacht Facility, as described in Section 5.16.G of the Ground Lease (the “Charter Yacht Facility”);

(c) office space consisting of approximately 250 square feet commonly known as the Restaurant Alcove, located dockside of the restaurant portion of the Facility (the “Restaurant Alcove Office Area”, together the “Office Area”) as shown on Exhibit A attached hereto.

All such portions of the Facility comprising the Premises are depicted on the plan attached hereto as Exhibit A. A copy of the Ground Lease is attached hereto as Exhibit B.

In addition, during the Term, Hornblower shall have the non-exclusive right to use the common areas of the Facility, including but not limited to the parking areas, drive aisles and driveways, and sidewalks, as well as the public and other common areas located in and around the Hotel and Restaurant portions of the Facility, including but not limited to entryways, lobbies, and hallways in each case, for the purpose of ingress and egress to and from the Premises.

1.3 CONTINUED USE OF PREMISES AND COMMON AREAS. Pursuant to this Agreement, as of the Commencement Date (defined below), Hornblower shall have the continued right to the use and occupancy of the Premises, access to the Premises, and use of the common areas of the Facility, subject to Sublessor’s obligations hereunder.

1.4 TERM. The Commencement Date shall be the date upon which Sublessor obtains written consent to enter into this Agreement from the City Manager of the City of Berkeley pursuant to the Ground Lease. Sublessor shall use commercially reasonable efforts to obtain the consent of the City Manager of the City of Berkeley to this Agreement within thirty (30) days after the date of execution of this Agreement by both Sublessor and Hornblower. As part of the request for consent to this Agreement, Sublessor shall use commercially reasonable efforts to obtain a non-disturbance agreement from the City of Berkeley (in a form reasonably acceptable to Hornblower) for the benefit of Hornblower so that in the event the Ground Lease is terminated, the City of Berkeley will recognize and not disturb Hornblower’s rights under this Agreement; provided that, the failure to obtain a non-disturbance agreement by the City of Berkeley shall not be a default hereunder or permit Hornblower the right to terminate this Agreement. If the Commencement Date has not occurred within thirty (30) days of the execution of this Agreement by both Sublessor and Hornblower, Hornblower shall have the right, at any time thereafter, to terminate this Agreement by delivering written notice of termination to Sublessor. The term of this Agreement shall expire (unless sooner terminated pursuant to the terms of this Agreement or unless extended pursuant to Section 1.6 below) [one hundred eight (108) months] after the Commencement Date (the “Term”)<sup>1</sup>. Sublessor and Hornblower shall confirm in writing the Commencement Date and the termination date of this Agreement. Notwithstanding the foregoing, in the event the Ground Lease is terminated for any reason, this Agreement shall immediately terminate and be of no further force and effect.

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<sup>1</sup> Note: To update month count upon final execution date to account for the lapsed time from last lease signing.

- 1.5 CONDITION OF PREMISES. The Parties acknowledge that Hornblower presently uses the Berth Area, the Office Area and the Charter Yacht Facility pursuant to the terms of the Prior Agreement. Hornblower shall be conclusively deemed to have accepted the Berth Area, the Office Area and the Charter Yacht Facility “AS IS” in the condition existing on the Commencement Date and to have waived all claims relating to the condition of the Berth Area, the Office Area and the Charter Yacht Facility. Sublessor makes no representation or warranty, express or implied, with respect to the condition of the Premises or the suitability thereof for use by Hornblower.
- 1.6 OPTION TO EXTEND. Sublessor hereby grants Hornblower an option to extend the Term for two additional periods of five (5) years each (each an “Extension Term” and together the “Extension Terms”), commencing immediately after the expiration of the initial Term and the first Extension Term, as applicable, upon the same material terms and conditions contained herein, including the annual increases in the Monthly Base Rent provided for in Section 2.2 hereof, except that there shall be no further options to extend the Term following Hornblower’s exercise of the second Extension Term granted by this Section 1.6. Notice of Hornblower's election to exercise the options to extend granted herein must be delivered to Sublessor in writing upon 180 days prior to expiration of the initial Term and the first Extension Term, as applicable. If Hornblower properly exercises the options granted herein, references in the Agreement to the “Term” shall be deemed to include the first Extension Term or second Extension Term, as applicable, unless the context clearly provides otherwise. Notwithstanding anything to the contrary contained herein, all option rights of Hornblower pursuant to this Section 1.6 shall automatically terminate without notice and shall be of no further force and effect, whether or not Hornblower has timely exercised the options granted herein, if a Default exists at the time of exercise of the options or at the time of commencement of the first Extension Term or Second Extension Term, as applicable.
- 1.7 EARLY TERMINATION. During the Initial Term, Hornblower shall have the right to terminate this Agreement upon one hundred eighty (180) days advance written notice, provided that, Hornblower pay to Sublessor on the effective date of such termination an amount equal to the sum of the Monthly Base Rent that would have been payable for the twenty-four (24) months following the date of such termination if the Lease had not been terminated.

## **Article 2 PAYMENTS**

- 2.1 MONTHLY BASE RENT. Hornblower agrees to pay to Sublessor without any prior notice or demand in immediately available funds and without any deduction or offset whatsoever, Monthly Base Rent (as defined below) and all other charges, payments, late fees or other amounts required to be paid by Hornblower under this Agreement (collectively, “Payments”). Monthly Base Rent shall be paid monthly in advance on the first day of each month of the Term. Monthly Base Rent shall be prorated for partial calendar months within the Term. Unpaid Payments shall bear interest at two (2) percentage points above the rate from time to time announced by Wells Fargo, N.A. at its San Francisco office as its prime rate, but in no event higher than the maximum rate permitted by Law (“Default Rate”) from

the date due until paid; provided, however, the Default Rate shall not commence to accrue until Hornblower is given three (3) business days notice and opportunity to cure. Hornblower's covenant to pay Payments shall be independent of every other covenant in this Agreement.

- 2.2 MONTHLY BASE RENT: ANNUAL INCREASE. During the first year of the Term, the “Monthly Base Rent” shall be \$8,800. Commencing with the anniversary of the Commencement Date occurring in 2024 and on each subsequent anniversary of the Commencement Date thereafter (each, an “Adjustment Date”), including the commencement of any Extension Term and each year thereafter during any Extension Term, the Monthly Base Rent shall be increased to the greater of (A) 105% of the Monthly Base Rent in effect during the year preceding such Adjustment Date, or (B) the Monthly Base Rent in effect during the year preceding such Adjustment Date increased by the percentage increase, if any, in the CPI (as defined below) during such immediately preceding year (such CPI increase in the Monthly Base Rent shall be calculated by multiplying the Monthly Base Rent in effect immediately prior to such Adjustment Date by a fraction, the numerator of which is the CPI most recently published and in effect prior to the Adjustment Date and the denominator of which is the CPI most recently published and in effect one year prior to the Adjustment Date). Sublessor shall provide written notice to Hornblower of each annual increase in Monthly Base Rent, and the calculations supporting the same, at least thirty (30) days prior to each Adjustment Date.

2.2.1 As used herein, the term “CPI” shall mean the Consumer Price Index for All Urban Consumers (1982 - 1984 = 100), San Francisco-Oakland-San Jose, California All Items, published by the United States Department of Labor, Bureau of Labor Statistics (the “Bureau”). In the event that the Bureau ceases to use the 1982-84, base of 100 as the basis of calculation and the Bureau does not recalculate the then applicable CPI number for all years including 1982-84, or the CPI shall be discontinued for any reason, then the parties shall thereafter accept and use such other CPI or comparable statistics on the cost of living for the United States as shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority selected by Sublessor and reasonably approved by Hornblower.

- 2.3 TAX PAYMENTS. Promptly upon request by Sublessor, Hornblower shall pay to Sublessor or to the applicable taxing authority any and all taxes payable by Sublessor levied or assessed upon the value of Hornblower's personal property located in the Premises, the amounts payable under this Agreement, or resulting from any alterations to the Premises undertaken by Hornblower. Such tax payments shall constitute Payments, pursuant to this Agreement. Hornblower shall be solely responsible for, and shall pay directly to the applicable taxing authority, all personal property taxes on any and all equipment or vehicles used by Hornblower on the Premises.
- 2.4 OTHER FINANCIAL REQUIREMENTS. Hornblower shall provide, promptly following the request of either Sublessor or the City of Berkeley, statements of receipts of and business transacted by Hornblower, as set forth in Section 2.5.A.3 of the Ground Lease. Hornblower shall also comply with the requirements applicable to “Concessionaire Agreement” set forth in Section 2.5.C of the Ground Lease.

- 2.5 SECURITY DEPOSIT. Hornblower shall not be required to pay or post any type of security deposit or financial assurance in connection with Hornblower's obligations under this Agreement.

### Article 3

#### **HORNBLOWER'S USE OF THE BERTH AREA AND CHARTER YACHT FACILITY**

- 3.1 USE LIMITATIONS. Hornblower shall use the Berth Area only for charter yacht docking and loading and unloading of supplies and passengers and other uses permitted under Section 5.16.E of the Ground Lease. From time to time upon Sublessor's request on no less than 72 hours' notice, Hornblower shall relocate its vessels for up to 4 hours at a time (taking into consideration loading/unloading of Hornblower events, weather, and safety conditions) from (x) the "Deck Area" or (y) such other portion of the Berth Area reasonably requested by Sublessor; provided that, in the event of a request described in the preceding clause (y), Sublessor shall pay to Hornblower \$275 per hour for such relocation. Hornblower acknowledges that its use of the Berth Area and Charter Yacht Facility is subject to the Ground Lease. Further, Hornblower hereby acknowledges and agrees that, pursuant to the Ground Lease, its use of the Charter Yacht Facility is strictly limited to food preparation, administrative and minor vessel maintenance activities aboard its charter yacht vessels. Hornblower shall not occupy or use the Berth Area or the Charter Yacht Facility for any purpose or in any manner which: (i) is unlawful or in violation of any Law or Environmental Law; (ii) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Facility; or (iii) is contrary to or prohibited by the terms and conditions of this Agreement or the Ground Lease. Hornblower shall at all times keep the Berth Area and the Charter Yacht Facility in good condition and repair, and in a neat and orderly condition, free of trash and rubbish, ordinary wear and tear and damage due to casualty and condemnation excepted. Hornblower may not make any improvements or alterations to the Berth Area or the Charter Yacht Facility without Sublessor's prior written consent, not to be unreasonably withheld, conditioned, or delayed. <sup>2</sup>As part of Hornblower's use of the Berth Area, Charter Yacht Facility, and Office Area Hornblower and its employees and invitees shall have the right to reasonably use the publicly accessible restroom facilities in the Hotel and Restaurant portions of the Facility; provided such use does not interfere with the use of such facilities by Sublessor, its guests, employees or invitees.
- 3.2 ENVIRONMENTAL RESTRICTIONS. Hornblower shall comply with all Environmental Laws governing the use, storage, disposal or generation of any Hazardous Materials in connection with Hornblower's operations at and use of the Premises. Except for Hazardous Materials used by Hornblower in its operation and use of the Premises (which operation and use shall be in compliance with applicable Environmental Laws and the Ground Lease), Hornblower shall not generate, store, handle or dispose of any Hazardous Materials in, on, or about the Premises without the prior written consent of Sublessor, which may be withheld in Sublessor's sole discretion. In the event that Hornblower is notified of any investigation or violation of any Environmental Law arising from Hornblower's activities

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<sup>2</sup> NTD: Sublessor cannot agree to restrict itself for alterations and improvements. Hornblower is already protected from interference per general protections of quiet enjoyment.

at the Premises, Hornblower shall immediately deliver to Sublessor a copy of such notice. Sublessor may conduct such tests and studies relating to compliance by Hornblower with Environmental Laws at the Premises as Sublessor reasonably deems desirable, all of which shall be completed at Hornblower's expense. Hornblower hereby indemnifies, and agrees to defend, protect and hold harmless, Sublessor, the City of Berkeley, the operator, property manager and/or general manager for the Facility, the ground lessor under the Ground Lease, any mortgagee of the Facility, and their respective partners, members, managers, directors, officers, agents and employees (collectively, the "Indemnitees") from any and all loss, claim, demand, action, expense, liability and cost (including reasonable attorneys' fees and expenses) to the extent arising out of Hornblower's violation of applicable Environmental Laws in its activities on or about the Premises during the Term. In case of any action or proceeding brought against any Indemnitee arising from Hornblower's breach of its covenants in this Section, Hornblower covenants to defend such action or proceeding by competent counsel selected by Hornblower and approved by Sublessor, in Sublessor's reasonable discretion. Sublessor reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity subject to Hornblower's reasonable consent. As used herein, "Hazardous Materials" means any substances, materials or wastes which are or become regulated under any Environmental Law or which are classified as hazardous or toxic under any Environmental Law, including but not limited to explosives, firearms, radioactive materials, asbestos, polychlorinated biphenyls, and petroleum products. As used herein, "Environmental Law" means any federal, state, or local law regulating Hazardous Materials, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Federal Water Pollution Control Act, as amended, and the Oil Pollution Act of 1970.

- 3.3 PARKING. Sublessor shall provide Hornblower with twenty-five (25) parking access cards for use by Hornblower and its employees, who shall have the right to use the parking areas at the Facility depicted on Exhibit C for vehicular parking during the Term, at no additional charge or cost to Hornblower, subject to Sublessor's generally applicable parking regulations. Hornblower's guests and customers may park in the parking areas at the Facility at Sublessor's standard parking rates or park off-site. Except for customary and usual service and delivery vehicles used in Hornblower's operations, Hornblower acknowledges and agrees that Hornblower shall not use parking spaces for vehicles larger than the striped size of the parking spaces. With the exception of one (1) work truck for crew usage, Hornblower's parking rights set forth in this Agreement are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours. If any vehicle is improperly using the parking areas, Sublessor shall have the right, in addition to all other rights and remedies of Sublessor, to tow away the vehicle without prior notice to Hornblower or any other party, and the cost thereof shall be paid to Sublessor by Hornblower within ten (10) days after notice from Sublessor to Hornblower.
- 3.4 SERVICES FOR THE BERTH AREA AND CHARTER YACHT FACILITY. Sublessor shall provide fresh water service, sewer service, electrical service, garbage service (including access to and use of sufficient garbage receptacles), and access to telecommunication lines for the Berth Area and Charter Yacht Facility, in each case, sufficient for and consistent with Hornblower's current use and enjoyment of the Berth

Area and Charter Yacht Facility, the cost for which is included in the Monthly Base Rent; provided, however, that upon Sublessor's installation of a separate meter or submeter for the electrical service for the Berth Area (which installation shall be at Sublessor's sole cost and expense), then Hornblower shall be responsible for the payment of the electricity used by Hornblower at the Berth Area and Hornblower shall promptly pay to the utility supplier (in the event Hornblower is directly billed by the utility supplier) or to Sublessor (in the event the Berth Area is submetered and Sublessor is directly billed by the utility supplier) for the charges for the electricity used by Hornblower at the Berth Area and such charges shall not be included in Monthly Base Rent. Sublessor shall not be liable for any interruption of the foregoing services, whether caused by conditions beyond the control of Sublessor or by accident, repairs, or strikes, or otherwise, nor shall such interruption constitute a breach of the terms of this Agreement on the part of Sublessor, except, in each case, to the extent caused by the gross negligence or willful misconduct of Sublessor. In the event of any stoppage or interruption of services or utilities, Sublessor shall diligently attempt to resume such services or utilities as promptly as practicable.

- 3.5 SIGNAGE: Subject to Sublessor's prior written approval, which approval may not be unreasonably withheld, Hornblower's compliance with the Berkeley Municipal Code, the "General Design Requirements" pertaining to signs attached as Exhibit B to the Ground Lease, and applicable law, Hornblower shall have the right to install minimally invasive signage in and around the Berth Area, the Charter Yacht Facility, and on Hornblower's vessels, including but not limited to, wayfinding signage outside of the boundaries of the Premises in key locations in order to assist Hornblower's invitees in finding their way to the Berth Area, the Charter Yacht Facility, and the Office Area.

#### **Article 4**

#### **HORNBLOWER'S USE OF THE OFFICE AREA**

- 4.1 USE LIMITATIONS. Hornblower shall have the right to occupy and use the Office Area for office and administration uses subject to such reasonable rules and regulations as Sublessor may impose from time to time (provided, however, that such rules and regulations do not materially adversely interfere with or impede Hornblower's rights under this Agreement). Hornblower shall not occupy or use the Office Area for any purpose or in any manner which: (1) is unlawful or in violation of any Law, Environmental Law or the Ground Lease; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Facility; or (3) is contrary to or prohibited by the terms and conditions of this Agreement. Hornblower shall at all times keep the Office Area in good condition and repair, and in a neat and orderly condition, free of trash and rubbish, ordinary wear and tear and damage due to casualty and condemnation excepted. Hornblower may not make any improvements or alterations to the Office Area without Sublessor's prior written consent, which consent shall not be unreasonably withheld. As part of Hornblower's use of the Premises, Hornblower and its employees and invitees shall have the right to reasonably use the publicly accessible restroom facilities in the Hotel and Restaurant portions of the Facility; provided such use does not interfere with the use of such facilities by Sublessor, its guests, employees or invitees.

- 4.2 SERVICES IN THE OFFICE AREA. Sublessor shall furnish to the Office Area electricity, heat and air conditioning, lighting, water, and sewer services sufficient for Hornblower's comfortable use and enjoyment of the Office Area, the cost for which is included in the Monthly Base Rent. In the event Hornblower obtains telecommunication services from a shared account with Sublessor, Hornblower shall be responsible for the payment of any such services used by Hornblower and Hornblower shall promptly pay to the telecommunications provider (in the event Hornblower is directly billed by the telecommunications provider) or to Sublessor for the charges for the telecommunications used by Hornblower and such charges shall not be included in Monthly Base Rent. Sublessor shall not be liable for any interruption of the foregoing services, whether caused by conditions beyond the control of Sublessor or by accident, repairs, or strikes, or otherwise, nor shall such interruption constitute a breach of the terms of this Agreement on the part of Sublessor, except, in each case, to the extent caused by the gross negligence or willful misconduct of Sublessor. In the event of any stoppage or interruption of services or utilities, Sublessor shall diligently attempt to resume such services or utilities as promptly as practicable.
- 4.3 SIGNAGE: Subject to Sublessor's prior written approval, which approval may not be unreasonably withheld, Hornblower shall have the right to install minimally invasive signage (i) in the Hotel portion of the Facility on or next to the door of each of the Tiburon Room Office Area and the Restaurant Alcove Office Area and (ii) outside of the boundaries of the Premises in key locations in order to assist Hornblower's invitees in finding their way to the Tiburon Room Office Area and the Restaurant Alcove Office Area.

## **Article 5 REPRESENTATIONS AND WARRANTIES**

Hornblower represents and warrants that, as of the Effective Date, it has obtained the licenses, approvals, and/or other permits and otherwise complied with all requirements of all federal, state and local laws necessary for Hornblower's operations at the Berkeley marina as a charter yacht service. Without limiting the generality of the foregoing, as of the Effective Date, Hornblower has obtained all required approvals, licenses and permits for operations as a full-service charter yacht service including the service of food and liquor contemplated hereby. Hornblower shall be responsible for maintaining and keeping in force and effect all such licenses, approvals and permits for operation the charter yacht service in compliance with all federal state and local laws during the term hereof.

Sublessor represents and warrants to Hornblower that, as of the Effective Date, a true and complete copy of the Ground Lease is attached hereto as Exhibit B. Sublessor also represents and warrants to Hornblower that, as of the Effective Date, the Ground Lease is in full force and effect, that the Ground Lease has not been amended, modified, or assigned except as previously disclosed to Hornblower, and that, to Sublessor's knowledge, no default exists on the part of either Sublessor or the City of Berkeley under the Ground Lease and no event exists that would with the passing of time or the giving of notice or both could reasonably be expected to constitute a default under the Ground Lease.

Hornblower is responsible for, and shall have sole and absolute discretion over, selecting and providing all crew and other personnel necessary in order to offer the charter yacht service and for payment of all wages, salaries or other compensation in connection therewith.

## **Article 6 MAINTENANCE**

Hornblower, at Hornblower's sole cost and expense, shall be responsible for maintenance and repair of the following in connection with its use of the Berth Area and the Charter Yacht Facilities:

(i) All normal and routine maintenance, upkeep, repair and regular cleaning of the entire Berth Area and Charter Yacht Facility as reasonably necessary during the Term or applicable Extension Term; provided, however, repairs or replacements which are a result of Sublessor's damage to the Berth Area or Charter Yacht Facility shall be the responsibility of Sublessor.

(ii) The major repair and replacement of the components of the Berth Area and Charter Yacht Facility ("Major Repair/Replacement Work") as follows:

(a) Replacement of the wood piling with appropriate pilings as needed, to maintain the dock facility in a sound and safe condition (as determined by Sublessor in its reasonable discretion or as required by the Ground Lease or any applicable law, regulation or other legal requirement).

(b) Replacement of the dock surface and structure (including ramp from shore to dock facility), and the replacement of the existing flotation, dock substructure and/or surface materials as necessary to maintain a safe, dry dock facility for normal customer load capacity of present and contemplated additional vessels (as determined by Sublessor in its reasonable discretion or as required by the Ground Lease or any applicable law, regulation or other legal requirement).

Notwithstanding the foregoing, to the extent that any Major Repair/Replacement Work is required during the last two (2) years of the Term or applicable Extension Term of this Agreement, then Sublessor shall be responsible for the performance of such Major Repair/Replacement Work and the cost of the Major Repair/Replacement Work shall be amortized over the useful life of such Major Repair/Replacement Work. Hornblower shall be responsible for payment of the portion of the amortized cost falling within the remaining Term of this Agreement, and Sublessor shall be responsible payment of the portion of the amortized cost following outside the Term of this Agreement. If Hornblower extends the Term pursuant to Section 1.6 above, Hornblower shall reimburse Sublessor for any portion of amortized cost of such Major Repair/Replacement Work falling falling within the applicable Extension Term.

(iii) Maintenance, repair, and replacement of the water, sewer lines, lighting and outlets, and electrical lines and meters to the extent that they service the Berth Area and Charter Yacht Facility (complying with applicable federal, state and local codes). All electrical outlets installed or maintained by Hornblower shall become permanent fixtures of the dock facility and may not be removed at the termination of this Agreement.

Hornblower shall provide a schedule of all maintenance and repair activities performed by Hornblower on the Berth Area and Charter Yacht Facilities during each calendar quarter to Sublessor within twenty (20) days after the close of each calendar quarter (i.e., March 31, June 30, September 30 and December 31). Hornblower shall not permit any lien of any mechanic, laborer or supplier or any other lien to be filed against the Premises or the Facility as a consequence of any work performed by or on behalf of Hornblower. If any such lien or claim for lien is filed, Hornblower shall within ten (10) days of receiving notice thereof (a) release such lien or claim of record or (b) deliver a bond in form and amount, and issued by surety, reasonably satisfactory to Sublessor. If Sublessor pays or discharges any such lien or claim of lien, Hornblower shall reimburse Sublessor for such amount, including expenses and attorneys' fees.

Sublessor shall, at its sole cost and expense, keep and maintain in good repair the common areas, parking areas, drive aisles, sidewalks, and paths through and across the Facility used by Hornblower and/or its guests and employees as permitted pursuant to this Agreement; unless the need for such maintenance or repairs is caused by or arises from the actions or omissions of Hornblower, its guests or employees, in which case Hornblower shall be responsible for such maintenance, repair, or replacement work. In the event that Hornblower notifies Sublessor of any required maintenance, repair or replacement of Facilities that is Sublessor's obligation hereunder, then Sublessor shall use commercially reasonable efforts cause such work to be completed, unless the condition presents an immediate hazard to public health or safety, in which case Sublessor shall immediately cause such work to be completed.

## **Article 7 DEFAULT AND REMEDIES**

7.1 EVENTS OF DEFAULT. The occurrence or existence of any one or more of the following shall constitute a "Default" by Hornblower under this Agreement: (i) Hornblower fails to pay any Monthly Base Rent or other Payment provided for hereunder when due and such failure continues for three (3) business days after written notice from Sublessor to Hornblower that such Monthly Base Rent or other Payment due hereunder is due and unpaid; (ii) Hornblower fails to observe or perform any of the other covenants, conditions or provisions of this Agreement and fails to cure such default within thirty (30) days after written notice thereof to Hornblower provided if such non-monetary default cannot reasonably be cured within 30 days Hornblower shall not be in default if it commences to cure within such 30 day period and thereafter diligently proceeds to cure; or (iii) Hornblower is dissolved, declared insolvent or an assignment is made for the benefit of creditors or a petition is filed by or against Hornblower to declare Hornblower bankrupt or seeking a plan of reorganization or arrangement under the Bankruptcy Act, or any amendment or substitution therefore, or to delay payment of, reduce or modify Hornblower's debts, which in the case of an involuntary action is not discharged within thirty (30) days.

### 7.2 SUBLESSOR'S REMEDIES

(a) A Default shall entitle Sublessor to exercise the rights and remedies set forth in this Section and all other rights and remedies set forth in this Agreement or now or

hereafter allowed by Law, whether legal or equitable, and all rights and remedies of Sublessor shall be cumulative and none shall exclude any other right or remedy.

(b) With respect to a Default, at any time Sublessor may terminate Hornblower's right to use the Premises by three (3) days' prior written notice to Hornblower stating such election. Upon the expiration of the period stated in Sublessor's written notice of termination (and unless such notice provides an option to cure within such period and Hornblower cures the Default within such period), Hornblower's right of use and possession shall terminate and this Agreement shall terminate. Upon such termination in writing of this Agreement and Hornblower's right to use the Premises, Sublessor shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Hornblower and the legal representatives of Hornblower and all other users or occupants of the Premises by unlawful detainer or other summary proceedings, or otherwise as permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures and personal property), but Sublessor shall not be obligated to effect such removal, and such property may, at Sublessor's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Hornblower, and the proceeds of any sale shall be applied pursuant to Law. Sublessor shall in no event be responsible for the value, preservation or safekeeping of any such property. Hornblower hereby waives all claims for damages that may be caused by Sublessor's removing or storing Hornblower's personal property pursuant to this Section, and Hornblower hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including reasonable attorneys' fees and expenses) arising out of or in any way related to such removal or storage. Upon such written termination of this Agreement and Hornblower's right to use of the Premises under this Agreement, Sublessor shall have the right to recover damages for Hornblower's Default as provided for by California Civil Code Section 1951.2, including past due Payments. In addition, Sublessor shall have the right to cure any such Default, in which case Hornblower shall be liable for all reasonable costs and expenses incurred by Sublessor in curing such Default, which costs and expenses shall be due immediately upon demand and shall constitute Payments under this Agreement.

(c) No delay or omission in the exercise of any right of Sublessor, and no exercise by Sublessor of its rights to perform any duty which Hornblower fails timely to perform, shall be construed as a waiver. No provision of this Agreement shall be deemed waived unless signed by Sublessor and any waiver shall not be deemed a waiver of any subsequent breach of the Agreement.

7.3 ATTORNEY'S FEES. In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Agreement, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all reasonable attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in

establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

- 7.4 BANKRUPTCY. Any election to assume this Agreement under Chapter 11 or 13 of the Bankruptcy Code by Hornblower as debtor-in-possession or by Hornblower's trustee (the "Electing Party") must provide for: (i) the Electing Party to cure or provide to Sublessor adequate assurance that it will cure all monetary defaults under this Agreement within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Agreement within thirty (30) days from the date of assumption. Sublessor and Hornblower acknowledge such condition to be commercially reasonable; and (ii) if the Electing Party has assumed this Agreement or elects to assign Hornblower's interest under this Agreement to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Hornblower under this Agreement. For the purposes hereof, "adequate assurance of future performance" means that the assignee has submitted to Sublessor a current financial statement, certified by its chief financial officer, which shows to Sublessor's reasonable satisfaction a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Hornblower's obligations under this Agreement.

## **Article 8**

### **SURRENDER OF PREMISES; HOLDING OVER**

- 8.1 IN GENERAL. Upon the date this Agreement expires or terminates (such date, the "Termination Date"), Hornblower shall surrender and vacate the Premises immediately and deliver possession thereof to Sublessor in a neat, clean and orderly condition, casualty and ordinary wear and tear excepted. Hornblower shall deliver to Sublessor all keys to any portions of the Premises. All improvements in and to the Premises shall remain upon the Premises at the end of the Term without compensation to Hornblower. If Hornblower fails to perform its obligations in a timely manner, Sublessor may perform such work at Hornblower's expense.
- 8.2 HOLDING OVER. In the event that Hornblower holds over in possession of the Premises after the Termination Date with the written consent of Sublessor, such occupancy shall be a month-to-month tenancy subject to all the terms and provisions of this Agreement, and Hornblower shall pay Monthly Base Rent to Sublessor in an amount equal to one hundred percent (100%) of the Monthly Base Rent payable for the month immediately preceding the holding over, subject to adjustment as provided in Section 2.2. In the event that Hornblower holds over in possession of the Premises after the Termination Date without the written consent of Sublessor, such occupancy shall be a month-to-month tenancy subject to all the terms and provisions of this Agreement, and Hornblower shall pay Monthly Base Rent to Sublessor in an amount equal to one hundred fifty percent (150%) of the Monthly Base Rent payable for the month immediately preceding the holding over, subject to adjustment as provided in Section 2.2. Hornblower shall also pay all damages sustained by Sublessor by reason of such retention of possession without Sublessor's written consent.

**Article 9**  
**DAMAGE BY FIRE OR OTHER CASUALTY; CONDEMNATION**

- 9.1 CASUALTY. If any fire or other casualty (whether insured or uninsured) renders all or substantially all of the Premises untenable for use by Hornblower, then Hornblower shall have the right, to be exercised in Hornblower's sole discretion, to terminate this Agreement by delivering written notice of termination to Sublessor within thirty (30) days of the fire or casualty and Hornblower shall assign any insurance proceeds received by Hornblower to Sublessor in connection with such fire or casualty; provided that, Hornblower shall have no option to terminate this Agreement in the event the fire or casualty results from a cause required to be insured against by Hornblower pursuant to this Agreement. In the event that Hornblower does not elect to terminate this Agreement pursuant to this Section 9.1, including to the extent Hornblower does not have the option to terminate this Agreement, then (1) Hornblower shall, at Hornblower's sole cost and expense, rebuild, repair or restore the Berth Area and/or Charter Yacht Facility to the extent damaged or destroyed, (2) Sublessor shall rebuild, repair, or restore the Office Area to the extent damaged or destroyed, and (3) Monthly Base Rent shall abate during the period of reconstruction and restoration in the same proportion to the total Monthly Base Rent as the portion of the Premises rendered untenable bears to the entire Premises. The provisions of this Agreement constitute an express agreement with respect to any and all damage to, or destruction of, the Premises or the Facility, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Agreement or to any damage to or destruction of the Premises or the Facility and are hereby waived.
- 9.2 TAKING OR CONDEMNATION. Subject to Sublessor's rights pursuant to Article 12 of the Ground Lease, in the event that all or substantially all of the Premises is taken or condemned for any public use or purpose (including a deed given in lieu of condemnation), then Hornblower shall have the right, to be exercised in Hornblower's sole discretion, to terminate this Agreement effective as of the date of such taking or condemnation by delivering written notice of termination to Sublessor within fifteen (15) days of such taking or condemnation; provided, that, if Hornblower does not elect to terminate this Agreement pursuant to this Section 9.2, Monthly Base Rent shall be reduced in the same proportion to the total Monthly Base Rent as the portion of the Premises so taken or condemned as to the entire Premises.

**Article 10**  
**INSURANCE**

- 10.1 HORNBLOWER'S INSURANCE. Hornblower, at Hornblower's expense, agrees to maintain in force, with a company or companies acceptable to Sublessor, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Sublessor covering the Premises on an occurrence basis against all claims for products and completed operations, personal injury/advertising injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Agreement, and such insurance shall be for such limits that are reasonably required by Sublessor from time to time but not

less than a combined single limit of \$10,000,000 per occurrence and \$10,000,000 in the aggregate; (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "All Risk" (i.e., "special causes of loss"), including Earthquake, property insurance in an amount adequate to cover the full replacement cost of all equipment, installations, fixtures, docks, piers (specifically including the Berth Area and Charter Yacht Facility) and contents of the Premises, but excluding the Office Area which Sublessor shall be responsible for insuring in the event of loss; (d) maritime and marine liability insurance covering the charter yachts used by or on behalf of or by authority of Hornblower with limits of not less than Ten Million and No/100 Dollars (\$10,000,000.00); (e) in the event a motor vehicle is to be used by Hornblower in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than Ten Million and No/100 Dollars (\$10,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Hornblower, its agents and employees in connection with this Agreement, of any owned, non-owned or hired motor vehicles; (f) liquor liability insurance covering Hornblower's serving or selling of alcoholic beverages with limits of not less than Ten Million and No/100 Dollars (\$10,000,000) combined single limit coverage. Each policy shall (i) name Sublessor and the Indemnitees as additional insureds (except Workers' Compensation and Employers' Liability Insurance), (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California with a Best's insurance rating of A-/VII or better, (iii) where applicable, provide for deductible amounts reasonably satisfactory to Sublessor and not permit co-insurance, (iv) shall provide that such insurance may not be canceled or amended without thirty (30) days' prior written notice to Sublessor, and (v) each policy of "All-Risks" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Hornblower shall deliver to Sublessor, certificates of insurance and at Sublessor's request, copies of all policies and renewals thereof to be maintained by Hornblower hereunder, upon the Effective Date and not less than ten (10) days prior to the expiration date of each policy. If Hornblower doesn't carry the insurance required hereunder or provide certificates of renewal as and when required hereunder, Sublessor may but shall not be obligated to acquire such insurance on Hornblower's behalf at Hornblower's sole cost and expense.

- 10.2 WAIVER OF SUBROGATION. Any policy or policies of fire, extended coverage or similar casualty insurance which either party obtains in connection with the Facility, the Premises, or Hornblower's personal property shall include a clause or endorsement denying the insurer any rights of subrogation against the other party (and the other parties named as additional insureds pursuant to this Article). Sublessor and Hornblower each waives any rights of recovery against the other (and the other parties named as additional insureds) for injury or loss due to hazards insurable by policies of fire, extended coverage or similar casualty insurance, regardless of whether such insurance policies or coverage shall actually have been obtained by the party granting such waiver, and regardless of the cause of such fire or casualty, including the negligence of the party benefiting from such waiver. Because this Section will preclude the assignment of any claim mentioned in it by way of subrogation or otherwise to an insurance company or any other person, each party to this Agreement agrees immediately to give to each of its insurance companies written notice of

the terms of the mutual waivers contained in this Section and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers contained herein.

**Article 11**  
**WAIVER OF CLAIMS AND INDEMNITY**

- 11.1 To the extent permitted by Law, Hornblower releases Sublessor and the other Indemnitees from, and waives all claims for, damage or injury to person or property sustained by Hornblower or any invitee, employee or occupant of the Premises or the Facility resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Facility or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Facility, or resulting directly or indirectly from any act or neglect of any invitee, employee or occupant of the Facility or of any other person, including Sublessor's agents and servants, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitees. Notwithstanding any provision of this Agreement to the contrary, to the maximum extent permitted by Law, each party hereby waives, and neither party shall be liable to the other party for, any consequential damages, special damages, incidental damages, or compensation or claims for inconvenience or loss of business, rents, or profits as a result of any injury, damage, or any matter arising under this Agreement, whether or not caused by the negligence or willful and wrongful act of any of the other party.
- 11.2 To the extent permitted by Law, Hornblower hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from or out of (i) Hornblower's occupancy of the Premises, (ii) the conduct of Hornblower's business on the Premises, (iii) any breach or default on the part of Hornblower in the performance of any covenant to be performed by Hornblower pursuant to this Agreement, and (iv) any negligence or willful misconduct of Hornblower, its agents, contractors, employees, or invitees, in or about the Premises or the Facility. Hornblower covenants to defend such action by competent counsel chosen by Hornblower and reasonably approved by Sublessor. Sublessor reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity subject to the reasonable consent of Hornblower. The foregoing indemnity shall not operate to relieve Indemnitees of liability to the extent such liability is caused by the negligence or willful and wrongful act of Indemnitees.
- 11.3 To the extent permitted by Law, Sublessor hereby indemnifies, and agrees to protect, defend and hold Hornblower and its shareholders, partners, affiliates, managers, members, directors, officers, employees, agents, contractors, and invitees (collectively, the "Hornblower Indemnitees") harmless, against any and all actions, losses, damages, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from (i) the conduct of Sublessor's business at the Facility, (ii) from any gross negligence or willful misconduct of Sublessor, its agents, contractors, employees, or invitees, in or about the Premises or the Facility, or (iii) any breach or default on the part of Sublessor in the performance of any covenant to be performed by Sublessor

pursuant to this Agreement except, in each case, to the extent Hornblower is obligated to indemnify the Indemnitees for such actions, losses, damages, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses pursuant to Section 11.2. Sublessor covenants to defend such action by competent counsel chosen by Sublessor and reasonably approved by Hornblower. Hornblower reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity subject to the reasonable consent of Sublessor. The foregoing indemnity shall not operate to relieve Hornblower Indemnitees of liability to the extent such liability is caused by the negligence or willful and wrongful act of Hornblower Indemnitees.

## Article 12 NOTICES

All notices provided for or permitted to be given pursuant to this Agreement must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or by registered or certified mail, return receipt requested, in each case, with a copy by email. Notice given in the foregoing manner shall be deemed given (i) when actually received or refused by the party to whom sent if personally served or delivered by overnight courier service, or (ii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt. All notices shall be deemed to have been properly served by sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed below:

If to Sublessor: 200 Marina Boulevard, Berkeley, LLC  
c/o Junson Assets Management LLC  
140 East 45<sup>th</sup> Street, 29<sup>th</sup> Fl.  
New York, NY 10017  
Attn: Asset Management & Legal  
Email: [jam\\_list@junsoncapital.com](mailto:jam_list@junsoncapital.com); [legal.list@junsoncapital.com](mailto:legal.list@junsoncapital.com)

If to Hornblower: HORNBLOWER YACHTS, INC.  
Pier 3, The Embarcadero  
San Francisco, California 94111  
Email: [jill.benson@cityexperiences.com](mailto:jill.benson@cityexperiences.com);  
[mitch.randall@hornblower.com](mailto:mitch.randall@hornblower.com)

The time period in which a response to any notice must be given shall commence to run from the date of acceptance of delivery by Sublessor or Hornblower. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of notice. By giving to the other party at least thirty (30) days written notice thereof, either party shall have the right to change their respective addresses for notices.

## Article 13 MISCELLANEOUS

- 13.1 LATE CHARGES: DEFAULT INTEREST. All payments required hereunder (other than the Monthly Base Rent, which shall be due as hereinbefore provided) shall be paid within fifteen (15) days after Sublessor's written demand. All such amounts (including Monthly Base Rent) not paid within three (3) business days of Hornblower's receipt of written notice that such amounts are overdue shall bear interest from the date due until the date paid at the Default Rate. In the event Hornblower is more than five (5) days late after notice in paying any installment of Payments due under this Agreement, Hornblower shall pay Sublessor a late charge equal to ten percent (10%) of the delinquent installment of Payments. Hornblower agrees such delinquency will cause Sublessor to incur costs not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Sublessor in processing delinquent payments, the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Sublessor for each delinquent payment in addition to all Payments otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for above are distinct and separate from one another. Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Hornblower under this Agreement, nor shall any such payments prevent Sublessor from exercising any right or remedy available to Sublessor upon Hornblower's failure to pay Payments when due, including the right to terminate this Agreement.
- 13.2 SUBJECT TO GROUND LEASE. This Agreement and all provisions hereof are subject and subordinate to the Ground Lease and the City of Berkeley's rights as ground lessor thereunder, all to the extent exclusively relating to the Premises. Hornblower acknowledges that with respect to any provision of this Agreement that requires the consent of Sublessor, Sublessor may be required to obtain the consent of the City of Berkeley pursuant to the Ground Lease and that Sublessor may not give its consent in any case where the City of Berkeley fails to give its consent. Except to the extent of Hornblower's obligations under this Agreement exclusively relating to the Premises, Hornblower shall have no liabilities or obligations of Sublessor under the Ground Lease, for which Sublessor shall be solely responsible (e.g., Sublessor shall be solely responsible for any obligations to pay rent or other amounts under the Ground Lease and any obligations with respect to the operation of the Hotel or the Restaurant).
- 13.3 DISCOUNT RATE FOR SUBLESSOR CHARTERS. Subject to availability, Sublessor shall have the right to charter Hornblower cruises from the Premises at a discounted rate of twenty-five percent (25%) off of standard yacht rental rates during the Term of this Agreement. In order to book a discounted charter pursuant to this Section 13.3, Sublessor shall submit a written request to Hornblower no more than sixty (60) days prior to the planned event specifying the date of the event, the type of cruise, and the number of planned attendees. Subject to availability and compliance with Hornblower's applicable rules and regulations, Hornblower shall make a charter vessel available to Sublessor to charter at the discounted rate, and food and beverages aboard the chartered vessel shall be offered to Sublessor and its attendees at a discounted rate of five percent (5%) off of standard food and beverage rates.
- 13.4 MARKETING. Sublessor and Hornblower shall use good faith efforts to explore whether there are opportunities for cross-marketing each other's business (e.g., Hornblower will

explore marketing Sublessor's hotel and restaurant businesses to Hornblower's customers, and Sublessor will explore marketing Hornblower's charter yacht cruises to Sublessor's guests and customers); provided that, in no event shall either party engage in such marketing without the prior written consent of the other party.

- 13.5 NO JURY TRIAL; VENUE; JURISDICTION. To the fullest extent permitted by law, including laws enacted after the Commencement Date, each party hereto shall not seek a jury trial, hereby waives trial by jury, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or connected with this Agreement, or any claim of injury, whether based on this Agreement or on tort law.
- 13.6 AUTHORITY. Each party represents and warrants to the other that it has full authority and power to enter into and perform its obligations hereunder, that the person executing this Agreement is fully empowered to do so, and that (other than approval by the City of Berkeley as specified in Section 1.4 herein) no consent or authorization is necessary from any third party.
- 13.7 ENTIRE AGREEMENT; SURVIVAL; BINDING EFFECT. This Agreement contains the entire agreement between the parties and there are no other agreements, either oral or written. The exhibits are incorporated into this Agreement and made a part hereof. This Agreement shall only be modified by a writing executed by Sublessor and Hornblower. Neither this Agreement, nor any notice nor memorandum thereof shall be recorded by Hornblower. All provisions which by their terms survive expiration or termination of the Agreement and the waivers of the right of jury trial, and the releases and the indemnities shall survive the expiration or termination of this Agreement. Hornblower may not without the prior written consent of Sublessor, which consent shall not be unreasonably withheld, assign this Agreement or otherwise transfer its rights hereunder to use or occupy the Premises or any portion thereof, and any attempt by Hornblower to make any such transfer without such consent shall be void; provided, however, that notwithstanding the foregoing, Hornblower shall have the right to assign this Agreement or otherwise transfer its rights hereunder with notice to Sublessor but without Sublessor's consent to (a) a successor corporation to Hornblower by merger or consolidation, (b) a purchaser of all or substantially all of Hornblower's equity interests, assets, or business as a going concern, or (c) to any entity controlled by, controlling or under common control with Hornblower. Subject to the foregoing restriction on transfer, this Agreement shall be binding upon and inure to the benefit of Sublessor and Hornblower and their respective heirs, legal representatives, successors and permitted assigns.
- 13.8 EXCULPATION. Hornblower agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Agreement shall only be enforced against Sublessor's leasehold interest in the Facility (including rents, insurance, sales and condemnation proceeds) and in no event against any other assets of the Sublessor, or Sublessor's officers or members and Hornblower shall not be entitled to any judgment in excess of such amount. Sublessor agrees that no agent, advisor, representative, affiliate, employee, director, officer, partner, member, beneficiary, investor, servant, shareholder,

trustee or other person or entity acting on Hornblower's behalf or otherwise related to or affiliated with Hornblower shall have any personal liability, directly or indirectly, under or in connection with this Agreement, and Sublessor shall look solely to Hornblower's assets for the payment of any claim or for any performance, and Sublessor, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

- 13.9 ACCORD AND SATISFACTION. No payment by Hornblower or receipt by Sublessor of a lesser amount than any installment or payment of Payments due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any payment of Payments shall be deemed an accord and satisfaction, and acceptance shall be without prejudice to Sublessor's right to pursue all remedies available to Sublessor. No receipt of money by Sublessor from Hornblower after the termination of this Agreement or Hornblower's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt of payment from anyone other than Hornblower, is not a waiver of any breach of this Agreement, and Sublessor may accept such payment on account of the amount due without prejudice to Sublessor's right to pursue any remedies available to Sublessor.
- 13.10 TIME; APPLICABLE LAW; CONSTRUCTION. Time is of the essence of this Agreement and each and all of its provisions. This Agreement shall be construed in accordance with the Laws of the State of California. If more than one person or entity signs this Agreement on behalf of Hornblower, the obligations hereunder shall be joint and several. If any term shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and this Agreement shall be valid and be enforced to the fullest extent permitted by Law.
- 13.11 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns in accordance with the terms of this Agreement.
- 13.12 QUIET ENJOYMENT. Upon Hornblower paying Monthly Rent Payments hereunder and fully and faithfully observing and performing all of the terms, covenants and conditions on Hornblower's part to be observed or performed, Hornblower may peaceably and quietly enjoy the Premises, subject, nevertheless, to the terms and conditions of this Agreement and the terms and conditions of the Ground Lease that exclusively relate to the Premises.
- 13.13 NO BROKERS. Each of Sublessor and Hornblower represents and warrants to the other that it has dealt with no real estate agent, broker or finder in connection with the negotiation and execution of this Agreement, and insofar as they know, no agent, broker or other person is entitled to any commission, finder's fee or other compensation in connection with the negotiation and execution of this Agreement. Sublessor and Hornblower each agree to indemnify and hold harmless the other against any and all claims, demands, damages, debts, liabilities, actions, accounts, obligations, claims of legal or equitable ownership interests, whether in law or equity, costs, expenses, liens, agreements, rights, causes and causes of action of any nature whatsoever incurred by reason of any brokerage fee,

commission or finder's fee that is payable or alleged to be payable to any agent, broker or finder because of any agreement, act, omission or statement of the indemnifying party.

- 13.14 ESTOPPEL CERTIFICATES. Within fifteen (15) days after written request from one party hereto (the "Requesting Party"), the other party hereto (the "Responding Party") shall execute and deliver to the Requesting Party, in a form reasonably requested by the Requesting Party, or any potential mortgagee, lender, assignee, or purchaser, an estoppel certificate certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of the modification), that there are no defaults hereunder and no events or circumstances that with the passing of time or giving of notice or both would constitute a default under this Agreement (or noting any such defaults, events, or circumstances), that all rents and any other sums due under this Agreement have been timely paid (or noting any that have not been paid when due), and to such other matters as may be reasonably requested by the Requesting Party.
- 13.15 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which together shall constitute but one and the same instrument. Transmission of an executed counterpart of this Agreement by electronic mail or facsimile (e.g., a PDF copy of an executed counterpart) shall have the same effect as delivery of an original signature page.
- 13.16 BERKELEY REQUIREMENTS.

13.16.1 Living Wage Ordinance (LWO). Hornblower agrees to pay wages in accordance with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance unless otherwise agreed to in a collective bargaining agreement. If Hornblower employs six or more part-time or full-time employees, and generates \$350,000 or more in annual gross receipts, Hornblower will be required to provide all eligible employees with City mandated minimum compensation during the Term, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

13.16.2 Hornblower shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance ("LWO"). If Hornblower is subject to the LWO, as defined therein, Hornblower shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Hornblower for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the Tenant's request subject to the Ground Lease. The refusal to produce these records upon reasonable demand shall be considered a default, subject to the provisions contained in ARTICLE 7 above.

13.16.3 If Hornblower is subject to the LWO, Hornblower shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Hornblower shall be required

to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased Premises.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

**SUBLESSOR:**

200 Marina Boulevard, Berkeley, LLC, \_\_\_\_\_,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

**HORNBLOWER:**

HORNBLOWER YACHTS, INC.,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

Exhibit A

**PLAN OF PREMISES**

[SEE FOLLOWING PAGES]

Exhibit B

**GROUND LEASE**

[SEE ATTACHED]

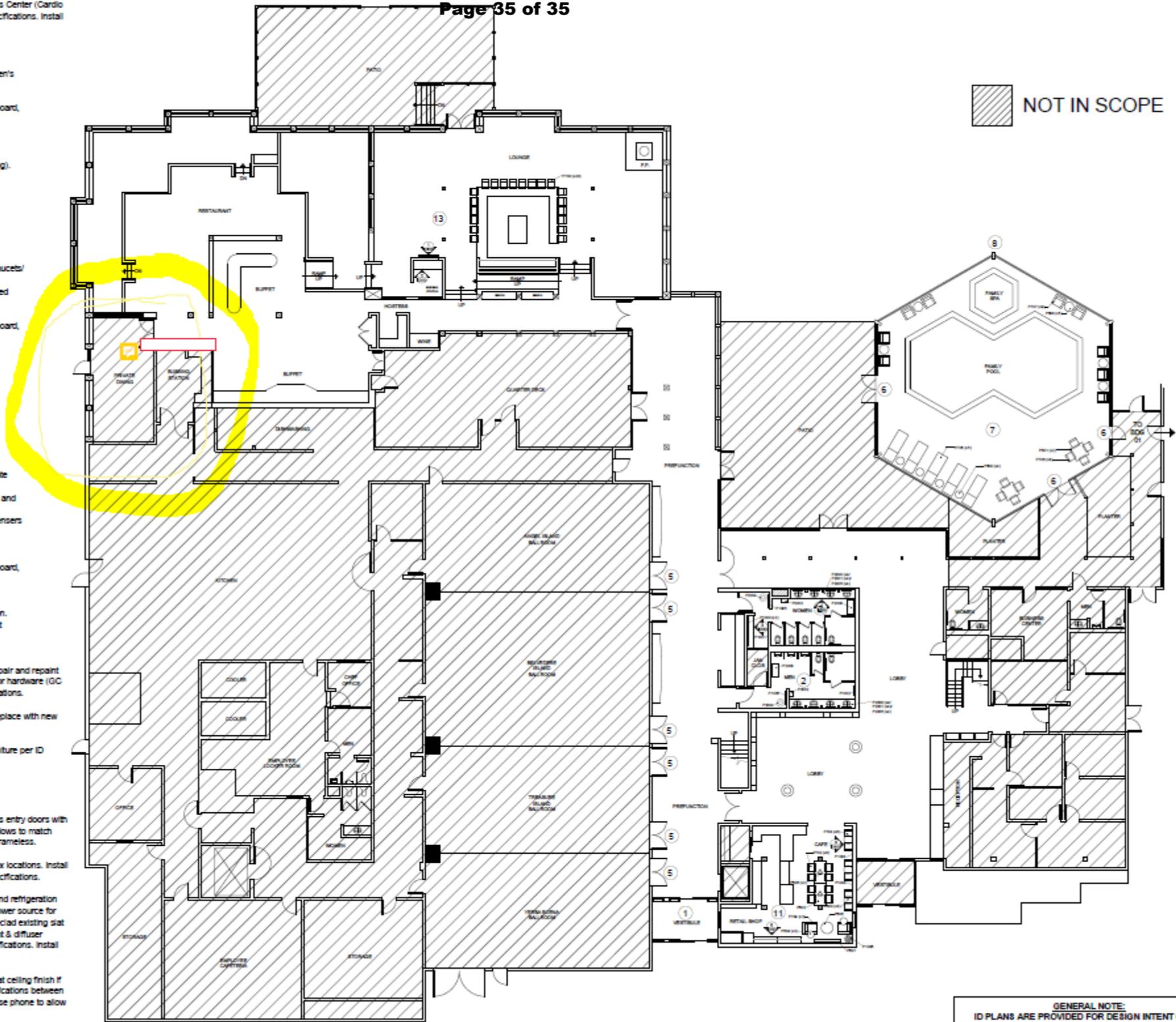
Exhibit C

**DEPICTION OF PARKING AREAS**

[SEE ATTACHED]



- Demo existing egg-crate light & diffuser at Ballroom/ Restaurant entrance vestibule, Fitness Center (Cardio & Weight Room), and Fitness Pool. Finish out soffits with smooth gyboard, paint per ID specifications. Install new mini recessed cans per ID specifications.
- Ballroom Public Restrooms:**
  - Repair and repaint entry doors per ID specifications to restore to like-new condition.
  - Demo existing vanities/ sinks/ faucets/ soap dispensers (to include dry vanity in women's restroom). Install new vanities/ sinks/ faucets/ soap dispensers per ID specifications.
  - Install new motion-activated paper towel dispensers per ID specifications.
  - Demo existing egg-crate light & diffuser at vanities. Finish out soffits with smooth gyboard, paint per ID specifications. Install new mini recessed cans per ID specifications.
  - Install new decorative, freestanding trash cans per ID specifications.
  - Demo existing partitions. Install new laminate partitions with metal base trim per ID specifications.
  - Install second coat hook in women's accessible stall (GC to provide - to match existing).
  - Install automatic flush valves at all toilets and urinals (GC to provide).
  - Install baby changing stations per ID specifications.
  - Install artwork and full-length mirrors per ID specifications.
  - Install 2 new vanity mirrors at women's dry vanity.
- Executive Meeting Center Restrooms:**
  - Remove popcorn ceiling texture and replace with smooth gyboard finish. Paint per ID specifications.
  - Demo existing vanities/ sinks/ faucets/ soap dispensers. Install new vanities/ sinks/ faucets/ soap dispensers per ID specifications.
  - Demo existing recessed paper towel dispensers and replace with new motion-activated paper towel dispensers per ID specifications.
  - Install new decorative, freestanding trash cans per ID specifications.
  - Demo existing egg-crate light & diffuser at vanities. Finish out soffits with smooth gyboard, paint per ID specifications. Install new mini recessed cans per ID specifications.
  - Demo existing surface mount light fixtures. Install new surface mount, decorative light fixtures per ID specifications.
  - Demo existing partitions. Install new laminate partitions with metal base trim per ID specifications.
  - Repair damaged window sills and repaint per ID specifications to restore to like-new condition.
  - Install automatic flush valves at all toilets and urinals (GC to provide).
  - Install baby changing stations per ID specifications.
  - Install artwork and full-length mirrors per ID specifications.
- Fitness/ Pool Restrooms:**
  - Install new ADA compliant laminate apron at vanities to conceal all plumbing. Laminate apron to match new laminate toilet partitions.
  - Repair damaged wall below women's restroom vanity, repaint per Wall Finishes Plan and ID specifications.
  - Demo existing vanity faucets/ soap dispensers. Install new vanity faucets/ soap dispensers per ID specifications.
  - Install new motion-activated paper towel dispensers per ID specifications.
  - Install new decorative, freestanding trash cans per ID specifications.
  - Demo existing egg-crate light & diffuser at vanities. Finish out soffits with smooth gyboard, paint per ID specifications. Install new mini recessed cans per ID specifications.
  - Install automatic flush valves at all toilets and urinals (GC to provide).
  - Install baby changing stations per ID specifications.
  - Repair and repaint wood benches per ID specifications to restore to like-new condition.
  - Demo existing surface mount light fixtures. Install new surface mount, decorative light fixtures per ID specifications.
  - Install artwork and full-length mirrors per ID specifications.
- Re-laminate all Ballroom/ Meeting Room entry and service doors per ID specifications. Repair and repaint door frames per ID specifications. Replace all Ballroom/ Meeting Room entry and service door hardware (GC to Provide). Install new stone threshold at all Ballroom/ Meeting Room entries per ID specifications.
- Restore entry doors at Fitness Center (Cardio) and Family Pool to like-new condition, or replace with new doors if existing doors cannot be restored.
- Remove all existing pool furniture from Family Pool and Fitness Pool. Install new pool furniture per ID specifications.
- Repair and repaint all rusted soffit vents around the exterior of the Family Pool per ID specifications.
- Build new smooth gyboard finish wall with clerestory window in one bay and metal & glass entry doors with side lights in other bay to create new Fitness Center (Weight Room). New entry doors & windows to match existing windows and doors throughout the Fitness Pool area. New clerestory window to be frameless.
- Remove existing corridor scances throughout Building 01 through 04. Retain existing j-box locations. Install new corridor scances at existing j-box locations throughout Buildings 01 through 04 per ID specifications.
- Remove dining tables and chairs from Retail Shop/ Cafe. Reconfigure existing shelving and refrigeration units, install new tables and seating per ID Specifications, and relocate TV. GC to provide power source for new community table within existing columns, and ensure power cable available for TV. Re-clad existing slat wall behind transaction counter with P308 per ID Specifications. Demo existing egg-crate light & diffuser behind transaction counter. Add new dropped soffit with smooth gyboard, paint per ID specifications. Install new mini recessed cans per ID specifications. Refer to ID300 for RCP of this area.
- Install HVAC ducting and vents in the new Fitness Center (Weight Room), demo wood slat ceiling finish if necessary. Install suspended ACT system with integrated recessed can lighting per ID specifications between the perimeter hardid soffits in this area to conceal new HVAC ducting. Relocate existing house phone to allow for installation of new wall mirror.
- Construct new full height walls to create new Bussing Station. Install new laminate base cabinet with laminate top per ID specifications. Install TV on guest side of new wall. GC to ensure power and cable available for TV. Replace all barstools at Bar per ID specifications.



NOT IN SCOPE

**GENERAL NOTE:**  
 ID PLANS ARE PROVIDED FOR DESIGN INTENT ONLY,  
 AND DIMENSIONS HAVE NOT BEEN VIF. IT IS THE  
 RESPONSIBILITY OF GC/ SUBCONTRACTORS TO VERIFY  
 ALL DIMENSIONS AS NEEDED PRIOR TO CONSTRUCTION.

**Dwellings**  
 INTERIORS & FURNITURE  
 Denver Colorado Office  
 6740 E. Harvard Ave. #200  
 Denver, CO 80224  
 P: 303-733-9334  
 F: 303-733-9337

Scale: 1/8" = 1'-0"  
 Issue Date: 09-03-2015  
 The professional services of the interior designer are limited to the design of the interior spaces. The designer does not provide structural, mechanical, electrical, plumbing, or fire protection design. The designer does not provide any other services not specifically stated in the contract.

PROJECT NAME: DOUBLE TREE BY HILTON  
 200 MARINA BOULEVARD, BERKELEY, CA 94710  
 PROJECT TYPE: PUBLIC SPACE & CORRIDORS RENOVATION  
 BUILDINGS 06, 07 & 08 - 1ST LEVEL  
 NEW CONSTRUCTION & FURNITURE PLAN  
 Project No: 15-0000  
 Drawing No: 15-0000-01

Sheet Number  
**ID**  
**050.11**

